

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

IN RE:) CHAPTER 13
)
BRYAN CHRISTOPHER POWERS, SR.) CASE NO. 16-32619-KRH
)
) JUDGE KEVIN R. HUENNEKENS
DEBTOR.)

U. S. BANK TRUST NATIONAL)
ASSOCIATION, AS TRUSTEE OF THE)
IGLOO SERIES III TRUST)
MOVANT,)
)
V.)
)
BRYAN CHRISTOPHER POWERS, SR.)
10803 Westek Drive)
Henrico, VA 23233,)
) DEBTOR,)
)
KELLY FORREST POWERS)
2340 Dunford Drive)
Falls Church, VA 22043)
) CO-DEBTOR,)
)
SUZANNE E. WADE,)
TRUSTEE)
7202 Glen Forest Drive, Ste. 202)
Richmond, VA 23226,)
) RESPONDENTS.)

MOTION FOR RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C § 362(a) AND THE CO-DEBTOR STAY PURSUANT TO 11 U.S.C. § 1301(a)

COMES NOW U. S. Bank Trust National Association, as Trustee of the Igloo Series III Trust ("Movant"), a secured creditor in the above-captioned case and, by and through counsel, and moves this Court to terminate the Automatic Stay and Co-Debtor Stay as to the real property

Keith Yacko (VA Bar No. 37854)
McMichael Taylor Gray, LLC
3550 Engineering Dr. Suite 260
Peachtree Corners, GA 30092
470-289-4347 kyacko@mtglaw.com

located at 10803 Westek Drive, Richmond, VA 23233 (“Property”), and, as grounds therefore, states as follows:

1. This proceeding seeking relief under 11 U.S.C. § 362 and 11 U.S.C. § 1301 is a contested matter within the meaning of Fed. R. Bankr. P. 4001 and 9014, and this court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (b)(2)(O). Venue is proper pursuant to 28 U.S.C. § 1409(a).

2. On May 25, 2016 Debtor(s) filed a petition with the Bankruptcy Court for the Eastern District of Virginia under Chapter 13 of Title 11 of the United States Bankruptcy Code.

COUNT 1
RELIEF FROM AUTOMATIC STAY

3 On or about December 31, 2010, Debtor, Bryan C. Powers and Co-Debtor, Kelly F. Powers, executed and delivered to Wells Fargo Bank, N.A. a Note in the amount of Two Hundred Six Thousand Eighty-Seven Dollars (\$206,087.00), plus interest at the rate of 4.750% per annum to be paid over thirty (30) years. A copy of the Note dated December 31, 2010 is attached as Exhibit A and incorporated herein.

4 To secure the repayment of the sums due under the Note, Debtor, Bryan C. Powers and Co-Debtor, Kelly F. Powers, executed and delivered to Wells Fargo Bank, N.A., a Deed of Trust recorded January 3, 2011, encumbering the Property, more fully described as:

LEGAL DESCRIPTION

All that certain piece or parcel of land, with all improvements and appearances thereto belonging, located in Tuckahoe District, Henrico County, Virginia, known as Lot 25, Block C, Section B, Cross Keys, as shown on plat of Subdivision entitled “Corrected Plat of Cross Keys, Section B, Tuckahoe District” made by J.K. Timmons and Associates, recorded April 17, 1981, in the Clerk’s Office, Circuit Court, Henrico County, Virginia, in Plat Book 73, Page 50 and 51, to which Plat reference is hereby made for a more particular description of the property.

A copy of the Deed of Trust is attached as Exhibit B and incorporated herein.

5. The Note and Deed of Trust were later transferred to Movant and Movant is the current holder of the Note and Deed of Trust.

6. The Deed of Trust contains provisions which would allow the Movant to take such steps as are necessary to secure and protect the Property.

7. Upon information and belief, there has been extensive fire damage done to the Property, rendering it uninhabitable and classified by local County authorities as a safety risk. As a result of such safety risk, Henrico County had scheduled the property for demolition. Such demolition has been postponed pending the results of this Motion.

8. Several attempts have been made by Movant at communication with Debtor's counsel to obtain permission from Debtor to enter the Property, secure it and ascertain the extent of the damage done so that ameliorative efforts could be made to preserve the Property. Unfortunately, Debtor has been uncommunicative in this regard.

9. Due to the non-responsiveness of the Debtor and the nature of the fire-damaged property, cause exists to lift the automatic stay and Movant seeks relief from the automatic stay to exercise its rights to preserve and secure the Property as provided for by the Deed of Trust.

10. Movant has incurred reasonable attorney's fees and costs in connection with prosecution of this motion.

COUNT II
RELIEF FROM CO-DEBTOR STAY

11. Movant incorporates the allegations of paragraphs 1 through 10 by reference herein.

12. Kelly Forrest Powers is a Co-debtor under the provisions of 11 U.S.C. § 1301(c) and is protected by the Co-Debtor stay.

13. U. S. Bank Trust National Association, as Trustee of the Igloo Series III Trust will be irreparably harmed by the continuation of the Co-Debtor Automatic Stay.

14. As described hereinabove, cause exists to terminate the Co-Debtor Stay.

WHEREFORE, U. S. Bank Trust National Association, as Trustee of the Igloo Series III Trust prays that this Court issue an order terminating or modifying the Automatic Stay provided by 11 U.S.C. § 362(a) and Co-Debtor Automatic Stay provided by 11 U.S.C. § 1301(a), as to the property located at 10803 Westek Drive, Richmond, VA 23233 and granting the following:

- a. Relief from the Automatic and Co-Debtor stays allowing Movant to exercise its rights under the Deed of Trust to preserve, secure, assess and take such steps as are necessary to repair and/or prevent the demolition of the Property.
- b. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.
- c. Award Movant its reasonable attorneys' fees and expenses associated with this

Motion, and the Trustee is hereby authorized to modify the plan as necessary to accommodate this claim;

d. For such other relief as the Court deems proper.

This the 2nd day of April, 2020.

McMichael Taylor Gray, LLC
/s/ Keith Yacko
Keith Yacko, VBN 37854
Attorney for Movant
3550 Engineering Drive, Suite 260
Peachtree Corners, GA. 30092
470-289-4347
kyacko@mtglaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via Regular U.S. Mail and/or Electronic Mail (CM/ECF) to the parties listed on the attached service list, on 2nd day of April, 2020.

SERVICE LIST

VIA U.S. MAIL

Bryan Christopher Powers, Sr.
10803 Westek Drive
Henrico, VA 23233

Kelly Forest Powers
2340 Dunford Drive
Falls Church, VA 22043

Kelly Forest Powers
2344 Dunford Drive
Falls Church, VA 22043

VIA CM/ECF

James E. Kane
Kane & Papa, PC
1313 East Cary Street
P.O. Box 508
Richmond, VA 23218-0508

Elizabeth Cabell Brogan
Suzanne E. Wade, Chapter 13 Trustee
7202 Glen Forest Drive
Suite 202
Richmond, VA 23226

Trustees

Suzanne E. Wade
7202 Glen Forest Drive, Ste. 202
Richmond, VA 23226

This the 2nd day of April, 2020.

McMichael Taylor Gray, LLC
/s/ Keith Yacko
Keith Yacko, VBN 37854
Attorney for Movant
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